

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JUAN CARLOS ALMONTE,

Plaintiff,

vs.

Case No. 4:20cv197-TKW-MAF

E. WATER, et al.,

Defendants.

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REPORT AND RECOMMENDATION

The pro se Plaintiff, who is incarcerated in Romulus, New York, has submitted a civil rights complaint, ECF No. 1. Although Plaintiff did not pay the filing fee or submit an in forma pauperis motion, the Court notes that Plaintiff is housed at the Five Points Correctional State Facility. *Id.* at 2. All Defendants are employed at that facility, *id.* at 2-3, and all events necessarily occurred there. Romulus is located in Seneca County, New York, and is not within the territorial jurisdiction of the Northern District of Florida. The proper forum for this action pursuant to 28 U.S.C. § 1391(b)

and 28 U.S.C. § 112(d) is in the United States District Court for the Western District of New York.¹

A federal district court has the authority under 28 U.S.C. § 1406(a) to transfer a case to another district or division “in which it could have been brought.” The Court may also raise the issue of defective venue sua sponte. Lipofsky v. New York State Workers Comp. Bd., 861 F.2d 1257, 1259 (11th Cir. 1988) (stating “a district court may raise on its own motion an issue of defective venue or lack of personal jurisdiction; but the court may not dismiss without first giving the parties an opportunity to present their views on the issue.”)

RECOMMENDATION

Pursuant to 28 U.S.C. § 1404(a) and § 1406(a), it is respectfully

RECOMMENDED that this case be transferred to the United States District

¹ Plaintiff should be well aware that venue is not appropriate in this Court because he attempted to initiate another case here in April 2019. Judicial notice is taken that case # 4:19cv174-RH-CAS was immediately transferred to New York and opened as case # 6:19cv06432.

Court for the Western District of New York, Rochester Division, for all further proceedings.

IN CHAMBERS at Tallahassee, Florida, on April 22, 2020.

S/ Martin A. Fitzpatrick
MARTIN A. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 14 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 14 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.